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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

KENDALL HITE,

Plaintiff and Appellant,

v.

GEORGE VALVERDE, as director, etc.,
et al.,

Defendants and Respondents.

G039926

(Super. Ct. No. 07CC06704)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Di Cesare, Judge. Affirmed.

Law Offices of Chad R. Maddox and Chad R. Maddox for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Alicia M.B. Fowler, Senior Assistant Attorney General, Michael E. Whitaker and Margaret Jaramilla Phe, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The Department of Motor Vehicles (DMV) suspended defendant's driver's license for failure to take a chemical test after the police officer had a reasonable belief defendant was driving under the influence of alcohol and arrested him. (Veh. Code, §§ 23152, 23612.)¹ Defendant petitioned the superior court for a writ of mandamus ordering the DMV to reinstate his license. The petition was denied. Defendant appeals from that denial. We affirm.

FACTS

On the night of March 18, 2007, defendant ran his Chevy Suburban through a neighbor's block wall and into the neighbor's yard. When the neighbor went out to see what had happened, he recognized the driver as his neighbor, defendant. Defendant "was the only person in the vehicle and was sitting behind the wheel in the [driver's] seat." The neighbor spoke with defendant "who had a strong odor of an alcoholic beverage on his breath." Despite having a blown front tire, defendant drove the Chevy Suburban down the street and parked it in front of his own house. He walked back to the scene where he told an officer that "he had been drinking and driving." He then told another officer he had been drinking too much "to be driving" and that he struck the neighbor's wall.

While defendant was confessing, his "wife arrived at the scene and started yelling at [her husband] "to stop talking." She also told the police she was an attorney. The police "asked her to leave the area," which she did.

Defendant had trouble "removing his identification from his wallet" and "dropped two cards." His breath smelled strongly of alcohol "and his eyes were red."

¹ All statutory references are to the Vehicle Code.

“His speech was slow and slurred,” he had trouble “standing on his feet and was swaying in a circular motion.” He had “the keys to the vehicle” and was its registered owner.

An officer arrested defendant for driving under the influence of alcohol and told him “he was required to submit to a chemical test to determine his blood alcohol concentration.” Defendant refused to take a test.

Defendant was taken to a detention facility, where an officer offered him “his choice of [a] blood or breath” test and read him “verbatim,” from the standard DMV form, the entire Chemical Refusal Admonition about having to take a chemical (blood or breath) test.² The admonition informed defendant he was required under state law to submit to a chemical test and had a choice between breath or blood tests; refusal would result in the one-year suspension of his license and could be used against him in court; and he had *no* right to talk to an attorney about whether to submit to a test. Defendant repeatedly stated he “wanted to speak to his wife before he made any decisions.” Not realizing he was already at the detention facility, defendant said, “Just take me to jail. I’m not going to answer any more questions and I’m refusing any tests.”

Defendant’s driver’s license was suspended; the suspension was stayed. At an administrative *per se* hearing, an officer testified that at the detention facility, defendant appeared to understand what he was told about submitting to a chemical test, but “seemed confused whether he should submit to a test” because of his wife’s warnings. The administrative judge found, *inter alia*, (1) defendant was told his “driving privilege would be suspended or revoked if [he] refused to complete the required testing”; and (2) there was no evidence defendant “was confused and didn’t understand

² The police report is ambiguous as to where and when the Chemical Refusal Admonition was read to defendant. But the officer who read defendant the admonition clarified in his testimony at the administrative hearing that he read defendant the advisement at the detention facility after defendant was arrested and transported there.

the admonition that was given to him.” Defendant’s driver’s license was suspended for a year.

Defendant petitioned the superior court for a peremptory writ of mandamus commanding the DMV to revoke its order suspending defendant’s driver’s license. The court denied the petition, noting the officer here “did not cause the confusion” and defendant “did not present evidence that he was legally unable to consent.”

DISCUSSION

Defendant contends that due to the unusual circumstances of his attorney spouse screaming advice to him while the officer was trying to admonish him “about implied consent and consequences,” his refusal to submit to a chemical test was merely a “verbal refusal,” not a legal one. He asserts he “was confused as to whether he was required to submit to a chemical test or not, and if so what consequences would occur.” Based on *Thompson v. Department of Motor Vehicles* (1980) 107 Cal.App.3d 354 (*Thompson*), defendant asserts the officer who gave him the admonition was required to “give the warning in a manner that clears up the confusion,” i.e. the officer was obliged to prevent the interruption caused by defendant’s wife “screaming at him to remain silent and refuse any test.” Based on *Rust v. Department of Motor Vehicles* (1968) 267 Cal.App.2d 545 (*Rust*), defendant asserts the arresting officer had a duty to elaborate upon the warning. (*Id.* at p. 547.) Finally, defendant argues a head injury rendered him “incapable of a refusal.”

Section 13353 provides in relevant part: “If a person refuses the officer’s request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer’s sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section . . . 23152 . . . , and that the person had refused to submit to . . . the test . . . after

being requested by the officer, the department shall do one of the following: [¶] (1) Suspend the person's privilege to operate a motor vehicle for a period of one year."

"On appeal, we review the record to determine whether the trial court's findings are supported by substantial evidence, resolving all evidentiary conflicts and drawing all legitimate and reasonable inferences in favor of the trial court's decision. [Citations.] 'Where the evidence supports more than one inference, we may not substitute our deductions for the trial court's. [Citation.] We may overturn the trial court's factual findings only if the evidence before the trial court is insufficient as a matter of law to sustain those findings.' [Citations.] We exercise de novo review, however, of the trial court's legal determinations." (*Roze v. Department of Motor Vehicles* (2006) 141 Cal.App.4th 1176, 1184.)

Defendant's contentions lack merit. This is not a case like *Thompson*, where, "at the time when the officer was attempting to give the required warning, there was interference from a radio transmission on the police vehicle's radio and this interference prevented a clear and intelligible warning" (*Thompson, supra*, 107 Cal.App.3d at p. 357.) Defendant here was given the admonition at the detention facility where his screaming wife was *not* present. Nor is this a case like *Rust*, where an officer told the defendant of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 and that he had an immediate right to an attorney, and thereby confused the defendant. (*Rust, supra*, 267 Cal.App.2d at pp. 546-547.) A suspected drunk driver "is not entitled to the advice of counsel in connection with the test," as was clearly communicated to defendant here when the officer read him the Chemical Refusal Admonition. (*Id.* at p. 546.) Consent conditioned on the presence of counsel is "in legal effect a refusal to take such test." (*Ent v. Department of Motor Vehicles* (1968) 265 Cal.App.2d 936, 943.) "'Refusals to take tests have never been excused in California on any ground other than officer-induced confusion'" (*Jones v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 615, 620.)

Contrary to defendant's assertion, his refusal was a "legal" one, not simply a "verbal" refusal. "There is a strong public policy against the nightmare of drunk driving. Thus, the implied consent law should be liberally construed to effect its purpose, which is to swiftly and accurately identify drunk drivers. [Citation.] [¶] Consequently, the driver should clearly and unambiguously manifest the consent required by the law. Consent which is not clear and unambiguous may be deemed a refusal. The determinative factor as to whether there is a refusal is not the arrestee's subjective state of mind, but rather the objective, fair meaning to be distilled from his words and conduct. [Citation.] A qualified or conditional consent is a refusal." (*Carrey v. Department of Motor Vehicles* (1986) 183 Cal.App.3d 1265, 1270-1271.)

Finally, defendant's assertion he suffered a head injury is unsupported by substantial evidence.

The court properly denied defendant's petition for a writ of mandamus commanding the DMV to revoke its order suspending defendant's driver's license.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.